

AMENDED IN ASSEMBLY MAY 14, 1996

AMENDED IN ASSEMBLY MAY 2, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2057

Introduced by Assembly Member Kevin Murray
(Principal coauthor: Assembly Member Boland)

January 11, 1996

An act to amend Sections 1054, 1054.2, 1054.5, and 1054.7 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as amended, K. Murray. Criminal procedure: discovery.

Existing law, amended by initiative statute, provides the means by which a party may compel the disclosure or production of information in criminal cases and authorizes the court to make any order necessary to enforce these provisions upon a showing that a party has failed to comply. The initiative statute provides that any amendment to its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

Among other things, where a party has failed to comply with criminal discovery provisions, this bill would require a court to order the immediate disclosure of all information required by those provisions, provide for a reasonable delay for analysis and preparation for the testimony of any witness, and make any other lawful order necessary to accomplish the

purposes of discovery. Where the court finds that the party willfully failed to comply, the bill would require the court to hold the responsible counsel in contempt, to impose an appropriate fine, and to report both the willful failure to comply and the amount of the fine to the State Bar. The bill would also specify a procedure by which a party may submit to the court in chambers any disclosure he or she believes may be withheld. Because it would amend an initiative statute, the bill would require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. By an initiative statute, the people of the
2 State of California have declared their intention that the
3 process of discovery in criminal cases should be a
4 “two-way street.” This act is enacted to provide more
5 effective mandatory or discretionary sanctions. The
6 Legislature therefore expresses its intention that trial
7 court judges aggressively enforce the rules of criminal
8 discovery and impose appropriate sanctions where
9 proper.

10 SEC. 2. Section 1054 of the Penal Code is amended to
11 read:

12 1054. This chapter shall be interpreted to give effect
13 to all of the following purposes:

14 (a) To promote the ascertainment of truth in trials by
15 requiring timely pretrial discovery.

16 (b) To save court time by requiring that discovery be
17 conducted informally between and among the parties
18 before judicial enforcement is requested.

19 (c) To save court time in trial and avoid the necessity
20 for frequent interruptions and postponements.

21 (d) To protect victims and witnesses from danger,
22 harassment, and undue delay of the proceedings.

23 (e) To provide that no discovery shall occur in
24 criminal cases except as provided by this chapter, other
25 express statutory provisions, or as mandated by the
26 Constitution of the United States.



(f) To provide that meaningful sanctions shall be imposed in cases of failure to comply with this chapter.

SEC. 3. Section 1054.2 of the Penal Code is amended to read:

1054.2. (a) No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(b) If the defendant is acting as his or her own attorney, the court shall protect the address and telephone number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

(c) In any case where there is evidence establishing probable cause to believe that an attorney has disclosed or has permitted disclosure without permission of the court, the court shall conduct a hearing to make a finding pursuant to Section 1054.5 and take appropriate action.

SEC. 4. Section 1054.5 of the Penal Code is amended to read:

1054.5. (a) No order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.

(b) Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days the opposing counsel fails to provide the materials and

1 information requested, the party may seek a court order.
2 Upon a showing that a party has not complied with
3 Section 1054.1, 1054.3, or 1054.7 and upon a showing that
4 the moving party complied with the informal discovery
5 procedure provided in this subdivision, the court shall
6 make the following orders:

7 (1) Immediate disclosure of all information required
8 by this chapter.

9 (2) A reasonable delay of at least 24 hours for analysis
10 and preparation for the testimony of any witness.

11 (3) Any other lawful order necessary to accomplish
12 the purposes set forth in Section 1054.

13 (4) The court shall advise the jury of any willful failure
14 or refusal to disclose or of any willful untimely disclosure.
15 The court shall instruct the jury that it may consider the
16 failure or refusal to disclose or untimely disclosure in
17 evaluating the credibility of the evidence.

18 (c) The court may prohibit the testimony of a witness
19 or the introduction of real evidence only if all other
20 sanctions have been exhausted and the party that was not
21 sanctioned agrees to the prohibition. The court shall not
22 dismiss a charge pursuant to subdivision (b) unless it is
23 required to do so by the United States Constitution.

24 (d) Upon a showing that a party has not complied with
25 Section 1054.1, 1054.3, or 1054.7, and upon a showing that
26 the moving party complied with the informal discovery
27 procedure provided in subdivision (b), the court shall
28 also make a finding whether the failure to comply with
29 Section 1054.1, 1054.3, or 1054.7 was willful or negligent.
30 If the court finds that the failure to comply with Section
31 1054.1, 1054.3, or 1054.7 was willful, in addition to the
32 sanctions provided in subdivision (b), the court shall hold
33 the responsible counsel in contempt, shall impose an
34 appropriate fine, and shall report both the willful failure
35 to comply and the amount of the fine to the State Bar. In
36 addition to these mandatory sanctions, the court may
37 impose any other sanction allowed by law, including, but
38 not limited to, changing the order of trial, delaying the
39 presentation of evidence withheld in violation of the

requirements of this chapter, and admonishing the jury that it may view withheld testimony with caution.

(e) In any case where, pursuant to subdivisions (b) and (d), the court finds that the failure to comply was negligent rather than willful, the court shall make the orders specified by paragraphs (1) and (2) of subdivision (b) and may, in its discretion, make any other orders specified in subdivision (b) or (d).

(f) Pursuant to Section 1054.7, a party may submit to the court in chambers any disclosure he or she believes may be withheld. This submission shall be made 30 days before trial or immediately upon learning the information, whichever occurs later, for purposes of a ruling on the question of whether the evidence must be disclosed pursuant to this chapter.

(1) If the court rules that there must be disclosure, the party shall have five court days to seek a writ permitting nondisclosure. *Upon the request of that party, the court shall stay the proceedings until the petition for the writ has been granted or denied, not to exceed five court days.*

(2) If the court rules that no disclosure is necessary, the court shall inform the opposing party, who shall have five court days to seek a writ compelling disclosure.

~~SEC. 4.—~~*Upon the request of that party, the court shall stay the proceedings until the petition for the writ has been granted or denied, not to exceed five court days.*

SEC. 5. Section 1054.7 of the Penal Code is amended to read:

1054.7. The disclosures required under this chapter, including the names of intended witnesses and real evidence to be introduced, shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. “Good cause” is limited to threats or possible danger to the safety of a victim or witness, possible loss or

1 destruction of evidence, or possible compromise of other
2 investigations by law enforcement.

3 Upon the request of any party, the court may permit a
4 showing of good cause for the denial or regulation of
5 disclosures, or any portion of that showing, to be made in
6 camera. A verbatim record shall be made of any such
7 proceeding. If the court enters an order granting relief
8 following a showing in camera, the entire record of the
9 showing shall be sealed and preserved in the records of
10 the court, and shall be made available to an appellate
11 court in the event of an appeal or writ. In its discretion,
12 the trial court may after trial and conviction, unseal any
13 previously sealed matter.

